KALIAPPAN RAMASAMY v. PENGERUSI, LEMBAGA PENCEGAHAN JENAYAH & ORS

FEDERAL COURT, PUTRAJAYA
RICHARD MALANJUM CJ (SABAH & SARAWAK)
ZAINUN ALI FCJ
ZAHARAH IBRAHIM FCJ
AZIAH ALI FCJ
JEFFREY TAN FCJ
[CIVIL APPEAL NO: 01(f)-31-09-2016 (R)]
5 OCTOBER 2017

PREVENTIVE DETENTION: *Prevention of Crime Act 1959 – Section 12 – Registration of criminals – Registration of inquired person by Registrar of Criminals in Criminal Register Book – Prerequisites – Finding of Inquiry Officer – Whether registration could be effected only after Prevention of Crime Board confirmed finding of Inquiry Officer – Section 12(1)(a) and (b) – Whether to be read conjunctively – Prevention of Crime Act 1959 ss. 4, 9, 10, 11, 12 & 15*

JUDICIAL REVIEW: *Preventive detention – Detention under Prevention of Crime Act 1959 – Registration of detainee in Criminal Registration Book – Order of Prevention of Crime Board subjecting detainee to police supervision – Whether registration of detainee valid – Whether order of Prevention of Crime Board valid – Prevention of Crime Act 1959, ss. 4, 9, 10, 11, 12 & 15*

The appellant was remanded pursuant to s. 4(1)(a) and (2)(a) of the Prevention of Crime Act 1959 ('the Act'), after which, following the report on him made by the Inquiry Officer under s. 10 of the Act, for which no review under s. 11 of the Act was sought by the appellant, the Registrar of Criminals ('Registrar') registered the appellant's name in the Criminal Register Book under s. 12(1) of the Act. It was not in dispute that in registering the appellant thus, the Registrar relied on the finding of the Inquiry Officer that he had reasonable grounds for believing that the appellant was a person within the 'registrable category' spoken of in Part 1 of the First Schedule to the Act. Be that as it may, the facts also showed that, at the time the Registrar effected registration under s. 12, the Prevention of Crime Board ('the Board') had yet to confirm the Inquiry Officer's report, let alone to issue the order under s. 15 of the Act putting the appellant under police supervision for three years ('the Order'), as the Board did in this case. The appellant argued that the registration under s. 12 of the Act, as well as the Order, were irregular and unlawful (*inter alia* citing the case of *Hanizam Hassan v. Pengerusi Lembaga Pencegahan Jenayah & Yang Lain*), and in the circumstances applied to the High Court for judicial review to quash the Order. The application, however, was dismissed and on appeal was likewise

dismissed by the Court of Appeal. The appellant was granted leave to appeal and in the circumstances posed the following questions of law for the determination of the judges of the apex court, namely: (i) whether the registration of a person by the Registrar under s. 12 of the Act ought only to be done after the Board had confirmed the finding of the Inquiry Officer ('Question 1'); (ii) whether s. 12(1)(a) and (b) of the Act ought to be read conjunctively ('Question 2'); (iii) whether upon the satisfaction of the Inquiry Officer that a person should come within the registrable category under s. 10(2) of the Act, the Board should then act and proceed under s. 10(3) and (4) of the Act ('Question 3'); and (iv) whether, if the answer to these questions were in the affirmative, the Federal Court could set aside the order of the Court of Appeal and the judgment of the High Court ('Question 4').

Held (dismissing appeal)
Per Richard Malanjum CJ (Sabah & Sarawak) delivering the judgment of the court:

(1) There are two primary ways to have the name of a person registered in the Criminal Register Book, namely under paras. 12(1)(a) and (b) and under sub-s. 12(2) of the Act. Paragraphs 12(1)(a) and (b) requires the Inquiry Officer to come up with a report, which should be served on the inquired person, that there are reasonable grounds for believing that the person inquired into is a member of any of the registrable categories. Having satisfied these basic requirements, the inquired person can be registered in the Criminal Register Book if *either* he does not seek review of the finding of the Inquiry Officer under s. 11 of the Act *or* the Board has confirmed the finding of the Inquiry Officer made under sub-s. 10(2) or made or confirmed the decision under para 10(3)(b). It is therefore clear in s. 12 that registration of an inquired person by the Registrar of Criminals is not dependent on the Board having first confirmed the finding of the Inquiry Officer or made a decision on the report of the Inquiry Officer. (paras 22-25)

(2) The Inquiry Officer here had conducted an inquiry and prepared a report stating reasonable grounds for believing that the appellant was a member of the registrable categories and that the appellant had been duly served with the report. It was also not in dispute that the appellant did not seek a review of the report under s. 11 of the Act. Accordingly, in this case, there was no procedural error in the issuance of the Order by reason of the registration of the name of the appellant in the Criminal Register Book before the Board had made the finding or decision in question. (paras 26 & 27)

(3) This court could not agree with the Judicial Commissioner that para. 10(3)(b) must be read together with paras. 12(1)(a) and (b) of the Act. Subsection 10(3) is limited to sub-s. 10(1) of the Act in which "*there are no sufficient grounds for believing that the person who was the subject of the inquiry is a member of any of the registrable categories*" whereas s. 12 deals with the role and duty of the Registrar in registering persons believed to be members of any of the registrable categories. As such, the two provisions could not be read together. This court was, therefore, in agreement with the analysis of the Court of Appeal on the relevant provisions, and would, consequently, overrule *Hanizam Hassan v. Pengerusi Lembaga Pencegahan Jenayah & Yang Lain*. (paras 29-32)

(4) As for Question 3, sub-ss. 10(3) and (4) of the Act only deal with the powers of the Board upon receiving a report from an Inquiry Officer who finds that *'there are no sufficient grounds for believing that the person who was the subject of the inquiry is a member of any of the registrable categories'*. It is independent of s. 10(2) where an *'Inquiry Officer is satisfied that there are reasonable grounds for believing that the person who was the subject of the inquiry is a member of any registrable categories'*. (para 33)

(5) Since the answers to the first three questions posed were in the negative, this court need not answer Question 4. (para 34)

Bahasa Malaysia *Headnotes*

Perayu telah ditahan di bawah s. 4(1)(a) dan 4(2)(a) Akta Pencegahan Jenayah 1959 ('Akta') dan berikutnya, ekoran satu laporan tentangnya yang disediakan oleh Pegawai Siasatan di bawah s. 10 Akta, terhadap mana tiada permohonan semakan dibuat oleh perayu, Pendaftar Penjenayah telah mendaftarkan nama perayu di dalam Buku Daftar Penjenayah di bawah s. 12(1) Akta. Tidak dinafikan bahawa dalam mendaftarkan nama perayu tersebut, Pendaftar Penjenayah bergantung kepada dapatan Pegawai Siasatan yang menyatakan bahawa beliau berpuas hati ada alasan-alasan munasabah bahawa perayu adalah seorang anggota dalam kategori boleh didaftarkan seperti yang disebut di Bahagian 1 Jadual Pertama Akta. Walau apapun, fakta juga menunjukkan bahawa, semasa Pendaftar Penjenayah membuat pendaftaran di bawah s. 12, Lembaga Pencegahan Jenayah ('Lembaga') masih belum mengesahkan laporan Pegawai Siasatan, apatah lagi mengeluarkan perintah di bawah s. 15 Akta meletakkan perayu di bawah pengawasan polis selama tiga tahun ('Perintah'), seperti yang dilakukan Lembaga di sini. Perayu menghujahkan bahawa pendaftarannya di bawah s. 12 di atas, serta Perintah, adalah tidak teratur dan tak sah (antara lain berdasarkan kes *Hanizam Hassan lwn. Pengerusi Lembaga Pencegahan Jenayah & Yang Lain*), dan berikutan itu memohon ke Mahkamah Tinggi untuk

semakan kehakiman bagi mengetepikan Perintah. Permohonan tersebut bagaimanapun ditolak, dan atas rayuan, juga ditolak oleh Mahkamah Rayuan. Perayu diberi kebenaran untuk merayu dan berikutnya mengemukakan empat soalan undang-undang untuk keputusan hakim-hakim mahkamah tertinggi, iaitu: (i) sama ada pendaftaran seseorang di bawah s. 12 Akta oleh Pendaftar Penjenayah hanya boleh dibuat selepas Lembaga mengesahkan dapatan Pegawai Siasatan ('Soalan 1'); (ii) sama ada s. 12(1)(a) dan (b) Akta harus dibaca secara konjunktif ('Soalan 2'); (iii) sama ada setelah Pegawai Siasatan berpuas hati bahawa seseorang itu adalah seorang anggota dalam kategori boleh didaftarkan di bawah s. 10(2) Akta, maka Lembaga selepas itu harus bertindak di bawah s. 10(3) dan (4) Akta; dan (iv) sama ada, jika jawapan kepada soalan-soalan berbentuk afirmatif, Mahkamah Persekutuan boleh mengganggu dan mengetepikan perintah yang dibuat oleh Mahkamah Rayuan serta penghakiman oleh Mahkamah Tinggi ('Soalan 4').

Diputuskan (menolak rayuan)

Oleh Richard Malanjum HB (Sabah & Sarawak) menyampaikan penghakiman mahkamah:

(1) Terdapat dua cara utama bagaimana nama seseorang boleh didaftar dalam Buku Daftar Penjenayah, iaitu di bawah perenggan 12(1)(a) dan (b), dan di bawah sub-s. 12(2) Akta. Perenggan 12(1)(a) dan (b) mengkehendaki Pegawai Siasatan menyediakan satu laporan, yang perlu diserah kepada orang yang disiasat, bahawa terdapat alasan munasabah bahawa orang yang disiasat itu adalah seorang anggota mana-mana kategori boleh didaftarkan. Setelah syarat-syarat ini dipenuhi, maka orang yang disiasat bolehlah didaftar dalam Buku Daftar Penjenayah, *itupun* jika beliau tidak memohon semakan terhadap dapatan Pegawai Siasatan di bawah s. 11 *atau* jika Lembaga telah mengesahkan dapatan Pegawai Siasatan yang dibuat di bawah sub-s. 10(2) atau membuat atau mengesahkan keputusan di bawah perenggan 10(3)(b). Dengan itu, jelas bahawa di bawah s. 12 pendaftaran seorang yang disiasat oleh Pendaftar Penjenayah tidak bergantung kepada Lembaga terlebih dahulu mengesahkan dapatan Pegawai Siasatan atau membuat keputusan terhadap laporan Pegawai Siasatan.

(2) Pegawai Siasatan di sini telah melakukan penyiasatan serta menyediakan laporan menyatakan wujudnya alasan munasabah bagi mempercayai bahawa perayu adalah seorang anggota dalam kategori boleh didaftarkan dan bahawa laporan telah pun diserahkan kepada perayu. Juga tidak dinafikan bahawa perayu tidak memohon untuk menyemak laporan di bawah s. 11 Akta. Oleh itu, dalam kes ini, tidak berlaku apa-apa kesilapan prosedur dalam pengeluaran Perintah disebabkan nama perayu telah didaftar dalam Buku Daftar Penjenayah sebelum Lembaga mengesahkan dapatan atau keputusan yang berkaitan.

(3) Mahkamah ini tidak dapat bersetuju dengan Pesuruhjaya Kehakiman bahawa perenggan 10(3)(b) harus dibaca bersama perenggan 12(1)(a) dan (b) Akta. Subseksyen 10(3) adalah terhad kepada sub-s. 19(1) di mana *'tidak ada alasan-alasan munasabah bagi mempercayai bahawa orang yang disiasat adalah seorang anggota mana-mana kategori boleh didaftarkan'*, sedangkan s. 12 menyangkuti peranan dan tugas Pendaftar dalam mendaftar orang-orang yang dipercayai termasuk dalam mana-mana kategori boleh didaftarkan. Oleh itu, kedua-dua peruntukan tidak boleh dibaca secara bersama. Maka, mahkamah ini bersetuju dengan penganalisaan Mahkamah Rayuan terhadap peruntukan-peruntukan yang relevan, sekali gus mengakas *Hanizam Hassan v. Pengerusi Lembaga Pencegahan Jenayah & Yang Lain*.

(4) Berhubung Soalan 3, sub-ss. 10(3) dan (4) Akta hanya bersangkut dengan kuasa-kuasa Lembaga ketika menerima laporan dari Pegawai Siasatan yang mendapati bahawa *'tiada alasan-alasan yang mencukupi bagi mempercayai bahawa orang yang menjadi hal perkara siasatan ialah seorang anggota mana-mana kategori boleh didaftarkan.'* Ia bebas daripada s. 10(2) di mana '*Pegawai Siasatan berpuas hati bahawa ada alasan-alasan munasabah bagi mempercayai bahawa orang yang menjadi hal perkara siasatan ialah seorang anggota mana-mana kategori yang boleh didaftarkan.'*

(5) Oleh kerana jawapan kepada tiga soalan pertama adalah negatif, maka tiada keperluan untuk menjawab Soalan 4.

Case(s) referred to:

Chow Mi Choi v. Pengerusi Lembaga Pencegahan Jenayah & 4 Ors [2015] MLJU 696 ***(refd)***

Hanizam Hassan v. Pengerusi Lembaga Pencegahan Jenayah & Yang Lain [2015] 5 CLJ 223 HC ***(ovrd)***

Legislation referred to:

Prevention of Crime Act 1959, ss. 3(1), 4(1)(a), (2)(a), 10(2), (3)(b), (4), 12(1)(a), (b), (2), 15A

For the appellant - P Visnuvarman; M/s Chambers of Visnu
For the respondent - Muhammad Sinti; SFC

[Editor's note: For the High Court judgment, please see Kaliappan Ramasamy v. Pengerusi, Lembaga Pencegahan Jenayah & Ors [2017] 1 LNS 139 (affirmed).]

Reported by Wan Sharif Ahmad

JUDGMENT

Introduction

[1] On 27 July 2016, this court granted the appellant leave to appeal on the following questions of law:

A (a) Whether registration of a person by the Registrar of Criminals under s. 12 of the Prevention of Crime Act 1959 ought to be done after the Board had convened considered, satisfied and confirmed the finding of the Inquiry Officer?;

B (b) Whether s. 12(1)(a) and (b) of the Prevention of Crime Act 1959 are to be read conjunctively?;

(c) Whether after the Inquiry Officer is satisfied that there are reasonable grounds and the person comes under the registrable categories under s. 10(2) of the Prevention of Crime Act 1959, then the Board invokes and proceeds under s. 10(3)(b) and 10(4)?

C

(d) If the answer to the questions at (a), (b) and (c) above is in the affirmative, whether the Federal Court could interfere with the decision of the Court of Appeal and exercise its jurisdiction to set aside the order of the Court of Appeal and the judgment of the High Court?

D **[2]** The appellant is dissatisfied with the decisions of the High Court and the Court of Appeal in dismissing his application for judicial review against an order made by the Prevention of Crime Board chaired by the first respondent ('the board').

E **[3]** The order of the board was for the appellant to be placed under police supervision pursuant to s. 15 of the Prevention of Crime Act 1959 (Act 297) ('the Act'). The police supervision order was dated 15 August 2014 and for a period of three years. The appellant was also required to reside within Mukim Beseri, Daerah Perlis, Negeri Perlis, Malaysia ('the order').

F **Brief Background**

[4] The appellant was arrested and detained by Inspector Anak Banta of the Pejabat Risikan/Operasi, Jabatan Siasatan Jenayah, IPD Kulai Jaya, Johor under s. 3(1) of the Act on 25 June 2014 at 1.45pm.

G **[5]** On 26 June 2014 about 10am, the appellant was brought before Tuan Mohd Azlan bin Mohd Allias, a Magistrate in the Magistrate Court Jenayah 1, Johor Bahru, Johor, for a remand order of 21 days under s. 4(1)(a) of the Act.

[6] Pursuant to para. 4(2)(a) of the Act, on application by the police on 16 July 2014, the appellant was further ordered by the same Magistrate to be remanded for a period of 38 days.

H

[7] On 17 July 2014 at 4.40pm, an Inquiry Officer by the name of Lee Wai Yi conducted an inquiry in respect of the appellant in accordance with s. 9 of the Act.

I

[8] Subsequently, the appellant was duly served with the finding of the Inquiry Officer on 23 July 2014, and on the same date the appellant indicated to Inspector Mohd Zairi bin Badderul @ Badrol that he did not wish to seek a review of the finding of the Inquiry Officer.

[9] Thereafter, the board had a meeting and confirmed that the appellant was a person within the category registrable under para. 1(i), Part 1, First Schedule to the Act.

[10] Meanwhile, on 6 August 2014 the Registrar of Criminals Police Superintendent Mohd Azlin Sadari registered the name of the appellant in the Criminal Register Book under s. 12(1) of the Act. He did so upon being informed by the Inquiry Officer on 6 August 2014 that he had reasonable grounds for believing that the appellant was a person within the registrable category. And since the appellant did not seek a review under s. 11 of the Act, it was therefore necessary for his name to be registered in the Criminal Register Book.

[11] On 16 August 2014, the appellant was sent to Mukim Beseri, Perlis, Malaysia in compliance with the Order.

[12] Dissatisfied with the Order, the appellant filed for judicial review seeking to quash it.

In The High Court

[13] Several issues were raised before the High Court in seeking to quash the order. Having considered those issues the learned Judicial Commissioner did not find any procedural defect in the process of issuing the order. The application was dismissed with costs of RM15,000.

In The Court Of Appeal

[14] The appellant appealed to the Court of Appeal on a number of grounds. However, in the course of the hearing, the main thrust of the submission was that there was a grave procedural defect in the order, in that the Registrar of Criminals registered the appellant even before the Board could make its decision on his case.

[15] Upon careful analysis of the relevant sections in the Act, the Court of Appeal held that there was no breach of the relevant provisions of the Act. The court was of the view that the appellant could be registered in the Criminal Register Book even before the board made its decision provided the appellant did not seek a review as in this case of the finding of the Inquiry Officer.

In This Court

The Submissions

[16] Before us learned counsel for the appellant mainly addressed the first question. The gist of his submission was that the Court of Appeal erred in its reading of the relevant provisions of the Act. It was his contention that the Registrar of Criminals should not have registered the name of the appellant before the board confirmed the findings of the Inquiry Officer. Learned counsel went on to submit that registration 'is a condition precedent before an Order can be issued by the Board under s. 15 and this can only be done after the Board has confirmed the finding and made a decision and then only Part III of the Act come into play.' It was thus submitted that there was non-compliance of procedural requirement within the meaning of s. 15A of the Act. It was further argued that the Act must be read as a whole in its context. The case of *Hanizam bin Hassan v. Pengerusi Lembaga Pencegahan Jenayah & Yang Lain* [2015] 5 CLJ 223 which was followed in *Chow Mi Choi v. Pengerusi Lembaga Pencegahan Jenayah & 4 Ors* [2015] MLJU 696; [2015] 6 AMR were cited in support of the case for the appellant.

[17] In response, learned Senior Federal Counsel for the respondents contended that the procedure under the Act was duly complied with. He submitted that the scheme of the relevant provisions of the Act is that the Registrar of Criminals can register the name of a person in the Criminal Register Book without having to wait for the Board to make a decision provided that:

(a) an Inquiry Officer has done an inquiry on the person;

(b) the Inquiry Officer found that upon the completion of an inquiry there were reasonable grounds for believing that the person inquired upon came within the registrable categories as listed in the First Schedule to the Act; and

(c) there is no request by the person inquired for a review of the finding of the Inquiry Officer.

[18] In this case learned Senior Federal Counsel asserted that the above steps were taken before the name of the appellant was registered in Criminal Register Book under s. 12 of the Act. Subsequently, the Board issued the order pursuant to s. 15 of the Act.

Our Decision

[19] For convenience and clarity, we reproduce the relevant provisions of the Act.

Appointment of Inquiry Officers

8. The Minister may, by writing under his hand, appoint any person by name or office, and either generally or for any particular case, to be an Inquiry Officer for the purposes of this Act: provided that no police officer shall be appointed to be an Inquiry Officer.

Duties and powers of Inquiry Officers

9 (1) When any person is brought before an Inquiry Officer under section 6, the Inquiry Officer shall inquire and report in writing to the Board whether there are reasonable grounds for believing that the person is a member of any of the registrable categories.

(2) An inquiry held under subsection (1) shall be held in such manner and in accordance with such procedure as the Board may direct.

(3) An Inquiry Officer may, for the purpose of any inquiry under this Act:

(a) procure and receive all such evidence, in any form and whether the evidence be admissible or not under any written law for the time being in force relating to evidence or criminal procedure, which he may think necessary or desirable;

(b) summon and examine witnesses on oath or affirmation, and may, for those purposes, administer any oath or affirmation;

(c) require the production of any document or other thing in his opinion relevant to the inquiry;

(d) if he considers it necessary in the public interest or to protect a witness, or his family or associates, receive evidence in the absence of the person who is the subject of the inquiry:

Provided that where any such evidence is received, the Inquiry Officer shall communicate to the person the substance of the evidence, so far as the Inquiry Officer may consider it compatible with the public interest or the need to protect a witness, or his family or associates so to do, and shall in every such case include in any report made under subsection 10(2) a statement of the circumstances in which the evidence was received;

(e) give any direction as may be necessary.

(4) Any person summoned as a witness under subsection (3) who without reasonable excuse fails to attend at the time and place mentioned in the summons or who, having attended, refuses to answer any question that may lawfully be put to him or to produce any document or thing which it is in his power to produce, shall be guilty of an offence and liable to imprisonment for a term not exceeding six months or to a fine not exceeding two thousand ringgit or to both.

(5) Neither the person who is the subject of the inquiry nor a witness at an inquiry shall be represented by an advocate and solicitor at the inquiry except when his own evidence is being taken and recorded by the Inquiry Officer.

(6) The Public Prosecutor may appear at an inquiry to assist the Inquiry Officer.

(7) The Minister may by regulations prescribe the allowances to be paid to witnesses summoned under subsection (3).

Access by Inquiry Officer to detainees or prisoners

9A(1) Notwithstanding any other written law, an Inquiry Officer conducting an inquiry under this Act shall be allowed to have access to any person whom he has reason to believe to be connected to or has any evidence of any offence who is:

(a) being detained under any other written law; or

(b) under confinement in prison, whether convicted or not.

(2) Nothing in this section shall authorize the attendance of the subject of the inquiry or his advocate and solicitor or representative, if any, at the place of detention or prison.

Report of Inquiry Officer

10 (1) If the Inquiry Officer is satisfied that there are no sufficient grounds for believing that the person who was the subject of the inquiry is a member of any of the registrable categories, he shall report his finding, together with his reasons for it, to the Board, and shall forward a copy of his finding to the officer having custody of the person, who shall forthwith serve a copy of the finding of the Inquiry Officer on that person.

(2) If the Inquiry Officer is satisfied that there are reasonable grounds for believing that the person who was the subject of the inquiry is a member of any of the registrable categories, he shall report the grounds, together with his finding, to the Board, and shall forward a copy of his finding to the officer having custody of the person, who shall forthwith serve a copy of the finding of the Inquiry Officer on that person.

(3) Whenever the Board, after considering the finding of the Inquiry Officer submitted under subsection (1) is satisfied with respect to any person that:

(a) there are no sufficient grounds for believing that the person is a member of any of the registrable categories, the Board shall forthwith direct any person having the custody of that person, within twenty-four hours from the receipt of the direction, to produce the person before a Sessions Court Judge, who shall thereupon discharge the order of remand made under section 4 and, if there are no other grounds on which the person is lawfully detained, shall order his immediate release;

(b) based on the Inquiry Officer's finding there are sufficient grounds for believing that the person is a member of any of the registrable categories, the Board shall proceed in accordance with Parts III, IV and IVA of this Act.

(4) If the Board makes a decision under paragraph (3)(b), it shall forward a copy of its decision to the officer having custody of the person, who shall forthwith serve a copy of the decision of the Board on that person. (emphasis added)

Review by the Board of decision of Inquiry Officer

11 (1) Any person who was the subject of an inquiry who is dissatisfied with any finding made under subsection 10(2) or decision under paragraph 10(3)(b) may, within fourteen days of the service thereunder of the copy of the finding or decision on him, by notice in writing, request the Board to review the finding or decision.

(2) The Board shall, upon making any review under subsection (1), and after considering the advice of a law officer thereon:

(a) confirm the finding made under subsection 10(2) or decision under paragraph 10(3)(b); or

(b) reverse the finding or decision:

Provided that if the Board reverses any such finding or decision, and the person who made the request is still in custody, the Board shall, within twenty-four hours of its decision, direct the person to be taken before a Sessions Court Judge, who shall thereupon discharge the order of remand and, if there are no other grounds on which the person is lawfully detained, shall order his immediate release.

Registration of persons believed to be members of any of the registrable categories

12 (1) The Registrar shall keep a Register for the purposes of this Act, in which shall be entered the name of every person:

(a) who is reported by an Inquiry Officer to be a person in respect of whom there are reasonable grounds for believing that he is a member of any of the registrable categories; and

(b) who has not requested any review under section 11, or in respect of whom the Board has confirmed the finding made under subsection 10(2) or made or confirmed the decision under paragraph 10(3)(b), together with such other particulars as may be prescribed.

(2) The Board may, if it considers in the interest of public order or security to do so, with or without inquiry under this Act direct the Registrar to enter in the Register the name, and such other particulars as may be prescribed, of any person who is a member of any of the registrable categories prescribed in Part II of the First Schedule. (emphasis added)

Police Supervision

15 (1) The Board may by order direct that any registered person named in the order shall be subject to the supervision of the police for any period not exceeding five years, if the Board is satisfied that it is necessary that control and supervision be exercised over the registered person but that it is not necessary to detain him and may renew any such order for a further period not exceeding five years at a time; and the registered person shall be conveyed under police escort to the State, district, mukim, town or village in which he is required to reside under subsection (2), if any.

(2) Any person placed under the supervision of the police by order made under this section shall also be subject to all or any of the following restrictions and conditions, as the Board may by order direct:

…

…

[20] We will deal with the first three questions together.

[21] In respect of the first question, there is a clear distinction made between the registration of a name of a person in the Criminal Register Book by the Registrar and the issuance of a Police Supervision Order by the Board.

[22] There are two primary ways to have the name of a person registered in the Criminal Register Book, namely under para. 12(1)(a) and (b) and under sub-s. 12(2) of the Act.

[23] Under paras. 12(1)(a) and (b) the basic requirement is for an Inquiry Officer to come up with a report that there are reasonable grounds for believing that the person inquired into is a member of any of the registrable categories. And although it is not specified it is reasonable to infer that the report of the Inquiry Officer must also be served on the inquired person.

[24] Having satisfied the basic requirement as above the name of the inquired person can then be registered in the Criminal Register Book if EITHER he does not seek for review of the finding of the Inquiry Officer under s. 11 of the Act OR if the Board has confirmed the finding of the Inquiry Officer made under sub-s. 10(2) or made or confirmed the decision under para. 10(3)(b). In registering the name of the inquired person the Registrar is also required to enter such other particulars as may be prescribed.

[25] It is therefore clear in s. 12 that registration of an inquired person by the Registrar of Criminals is not dependent on the Board having first confirmed the finding of the Inquiry Officer or made a decision based on the report of the Inquiry Officer.

[26] In this case, it is not in dispute that the Inquiry Officer conducted an inquiry and prepared a report stating reasonable grounds for believing that the appellant is a member of any of the registrable categories and that the appellant had been duly served with the report. It is also not in dispute that the appellant did not seek a review of the report under s. 11 of the Act.

[27] Accordingly, in this case we find no procedural error in the issuance of the order by reason of the registration of the name of the appellant in the Criminal Register Book before the Board has made its finding or decision.

[28] In *Hanizam bin Hassan v. Pengerusi Lembaga Pencegahan Jenayah (supra)* the learned Judicial Commissioner in considering s. 12 of the Act said this, *inter alia*:

> [117] Mahkamah ini telah menghalusi penghujahan peguam pemohon yang terpelajar berkaitan isu (f) dan (g). Secara ringkasnya, peguam pemohon yang terpelajar menjurus kepada kegagalan responden-responden mematuhi peruntukan s. 10(3)(b) Akta itu apabila pegawai siasatan telah mendaftarkan nama pemohon sebagai 'registered person' pada 2 Jun 2014 sebelum Lembaga Pencegahan Jenayah bersidang dan mengesahkan dapatan pegawai siasatan pada 3 Jun 2014.
>
> [118] Sebaliknya, PKP yang terpelajar peruntukan s. 12(1)(a) dan (b) Akta itu perlu dibaca secara berasingan (disjunctive) dan bukannya secara bersama. Pegawai siasatan boleh meminta pendaftar mendaftarkan nama pemohon terlebih dahulu dan tidak perlu menunggu Lembaga bersidang sebagaimana yang dihujahkan oleh peguam pemohon.
>
> [119] Mahkamah ini tidak bersetuju dengan hujahan PKP yang terpelajar yang menyatakan peruntukan s. 12(1)(a) dan (b) Akta itu perlu dibaca secara berasingan (disjunctive) dan bukannya bersama-sama. Mahkamah ini bersetuju dengan hujahan peguam pemohon yang terpelajar, pendaftaran nama pemohon dalam bahagian III hanya akan dilakukan selepas Lembaga mengesahkan dapatan pegawai siasatan sebagaimana yang diperuntukkan di bawah s. 10(3)(b) Akta itu. Mahkamah ini berpendapat tindakan pendaftar yang mendaftarkan nama pemohon pada 2 Jun 2014 sebelum ianya disahkan oleh Lembaga Pencegahan Jenayah pada 3 Jun 2014 ianya bercanggah dengan peruntukan yang berkaitan.
>
> [120] Mahkamah ini berpendapat peruntukan s. 10(3)(b) Akta itu perlu dibaca bersama dengan peruntukan ss. 12(1)(a) dan (b) Akta itu. Mahkamah ini sedar dalam memberikan tafsiran peruntukan undang-undang yang melibatkan kebebasan individu, pendekatan yang memihak kepada pemohon perlu diberikan.
>
> [121] Mahkamah ini dengan hormatnya tidak bersetuju dengan hujahan PKP yang terpelajar dalam isu ini. Mahkamah ini berpendapat tindakan pendaftar yang mendaftarkan nama pemohon lebih awal iaitu pada 2 Jun 2014 sebelum ianya disahkan oleh Lembaga Pencegahan Jenayah merupakan suatu ketidakpatuhan prosedur yang memihak kepada pemohon.

[29] In relation to the second question, with respect, we are unable to agree with the learned Judicial Commissioner that para. 10(3)(b) must be read together with paras. 12(1)(a) and (b) of the Act.

[30] It should be noted that sub-s. 10(3) opens with the phrase 'Whenever the Board, after considering the finding of the Inquiry Officer submitted under subsection (1) is satisfied with respect to any person that ...'.

[31] Subsection 10(1) reads:

> (1) If the Inquiry Officer is satisfied that there are no sufficient grounds for believing that the person who was the subject of the inquiry is a member of any of the registrable categories, he shall report his finding, together with his reasons for it, to the Board, and shall forward a copy of his finding to the officer having custody of the person, who shall forthwith serve a copy of the finding of the Inquiry Officer on that person.

[32] In short, sub-s. 10(3) is limited to sub-s. 10(1) of the Act in which 'there are no sufficient grounds for believing that the person who was the subject of the inquiry is a member of any of the registrable categories' whereas s. 12 deals with the role and duty of the Registrar in registering persons believed to be members of any of the registrable categories. As such the two provisions cannot be read together. We are therefore in agreement with the analysis of the Court of Appeal on the relevant provisions. We therefore overrule *Hanizam bin Hassan v. Pengerusi Lembaga Pencegahan Jenayah (supra)* on this issue.

[33] As regards the third question, it is also our view that sub-ss. 10(3) and (4) of the Act only deal with the powers of the Board upon receiving a report from an Inquiry Officer who finds that 'there are no sufficient grounds for believing that the person who was the subject of the inquiry is a member of any of the registrable categories'. It is independent of s. 10(2) where an 'Inquiry Officer is satisfied that there are reasonable grounds for believing that the person who was the subject of the inquiry is a member of any of the registrable categories'.

[34] Our answers to the first three questions posed are therefore in the negative. As such we need not answer question 4.

[35] This appeal is therefore dismissed.